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## 5 Attorneys for Defendant/Counterclaimant

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

11 POM WONDERFUL LLC, a Delaware  
12 limited liability company, THE  
WONDERFUL COMPANY LLC, a  
Delaware limited liability company

Case No.: CV13-06917-RGK(JPRx)

## COUNTERCLAIM

## **DEMAND FOR TRIAL BY JURY**

### **Plaintiffs.**

VS.

13 ROBERT G. HUBBARD d/b/a PUR  
14 BEVERAGES, PORTLAND  
15 BOTTLING COMPANY and  
16 Oregonian company, and DOES 1  
17 through 10, inclusive.

#### Defendants.

20 ROBERT G. HUBBARD d/b/a PUR BEVERAGES.

#### **Counterclaimant.**

VS.

POM WONDERFUL LLC, a Delaware limited liability company, THE WONDERFUL COMPANY LLC, a Delaware limited liability company,

### Counterdefendants.

1 Counterclaimant Robert G. Hubbard (“Counterclaimant”), for its  
 2 Counterclaim against Counterdefendants POM WONDERFUL LLC, a Delaware  
 3 limited liability company (“PWL”), THE WONDERFUL COMPANY LLC, a  
 4 Delaware limited liability company (“TWC”) (PWL and TWC are collectively  
 5 referred to hereinafter as “Counterdefendant”), alleges as follows:

6

7 **PARTIES**

- 8 1. Counterclaimant is an individual doing business as Pur Beverage.  
 9 2. Counterclaimant is informed and believes, and thereon alleges, that  
 10 Counterdefendant POM WONDERFUL LLC, is a limited liability company  
 11 organized under the laws of the State of Delaware.  
 12 3. Counterclaimant is informed and believes, and thereon alleges, that  
 13 Counterdefendant THE WONDERFUL COMPANY LLC, is a limited liability  
 14 company organized under the laws of the State of Delaware.

15

**JURISDICTION**

- 16 4. Subject matter jurisdiction in this Court is proper pursuant to 28 U.S.C.  
 17 Sections 1331, 1338(a), and 2201.  
 18 5. Plaintiff/Counterdefendant has consented to the personal jurisdiction of  
 19 this Court, and venue is proper for the Counterclaim under 28 U.S.C. Section 1391.

20

21 **FIRST COUNTERCLAIM**

22 **UNFAIR COMPETITION IN VIOLATION OF THE COMMON LAW**

- 23 6. As a separate claim for relief, Counterclaimant alleges that  
 24 Counterdefendant has and is engaged in acts constituting willful and deliberate  
 25 unfair competition in violation of the common law.

- 26 7. Counterdefendant intentionally brings claims against Counterclaimant  
 27 that Counterdefendant knows to be false and frivolous. Counterdefendant knows  
 28 that the purported trademark rights asserted by Counterdefendant in the underlying

1 complaint in this action are not enforceable on grounds of fraud, abandonment, and  
2 genericism. Despite knowing that the purported trademark rights are not  
3 enforceable, Counterdefendant proceeds with this lawsuit in an effort to inhibit  
4 competition and prevent market participants, including Counterclaimant, from  
5 competing fairly in the marketplace.

6       8. As a result of the above actions, Counterdefendant has suffered  
7 damages in the form of lost sales and lost opportunities.

8        9. Counterdefendant has continued to proceed with the lawsuit despite  
9 knowledge that the claims are without merit. Counterdefendant has engaged in this  
10 unlawful activity in bad faith with a willful, deliberate and malicious intent to  
11 impede competition by both marketplace participants and Counterclaimant, and to  
12 injure the purchasing public, marketplace participants and Counterclaimant.

13       10. The aforesaid acts of Counterdefendant constitute willful and deliberate  
14 unfair competition under the common law of California.

15        11. Counterdefendant's acts of unfair competition have caused  
16 Counterclaimant irreparable injury, loss of reputation, and pecuniary damages.  
17 Unless enjoined by this Court, Counterdefendant will continue said unlawful acts of  
18 willful and deliberate unfair competition to Counterclaimant's immediate and  
19 irreparable damage.

**SECOND COUNTERCLAIM**  
**UNFAIR COMPETITION IN VIOLATION OF THE STATUTORY LAWS**  
**OF THE STATE OF CALIFORNIA**

24       12. Paragraphs 1 through 11 of this Counterclaim are incorporated by  
25 reference as a part of this claim.

26       13. As a separate claim for relief, Counterclaimant alleges that  
27 Counterdefendant has and is engaged in acts constituting unfair competition within  
28 the meaning of Cal. Bus. & Prof. Code § 17200.

14. The aforesaid acts of Counterdefendant constitute unfair competition in violation of California state law under Cal. Bus. & Prof. Code § 17200.

15. Counterdefendant's acts of unfair competition have caused Counterclaimant irreparable injury, loss of reputation and pecuniary damages. Unless enjoined by this court, Counterdefendant will continue said acts of unfair competition to Counterclaimant's immediate and irreparable damage.

## **THIRD COUNTERCLAIM**

## **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

16. Paragraphs 1 through 15 of this Counterclaim are incorporated by  
reference as a part of this claim.

12        17. Counterdefendant asserts trademark rights in one or more trademarks  
13 that Counterdefendant knows to be unenforceable and/or not infringed by  
14 Counterclaimant.

15        18. Counterclaimant submits that consumers are not likely to be misled,  
16 deceived and/or confused by the simultaneous uses of Counterclaimant and  
17 Counterdefendant in connection with their various products.

18        19. Counterclaimant submits that Counterdefendant suit for trademark  
19 infringement is without basis and seeks a declaration that there is no likelihood of  
20 confusion.

21        20. Counterclaimant statements and conduct demonstrate that an actual  
22 case or controversy exists between the parties hereto regarding the asserted  
23 infringement. By reason thereof, Counterclaimant is entitled to a binding declaration  
24 clarifying the parties' rights and declaring that Counterclaimant use does not  
25 infringe any right Counterdefendant may have.

26       21. Counterclaimant submits that the case is an exceptional case such that  
27 Counterclaimant is entitled to an award of damages, both actual and statutory, and  
28 attorney fees.

1  
2                   **FOURTH COUNTERCLAIM**  
3

**INTENTIONAL INTERFENCE WITH CONTRACTUAL RELATIONS**

4                 22. Paragraphs 1 through 21 of this Counterclaim are incorporated by  
5 reference as a part of this claim.

6                 23. Counterclaimant had established relationships with numerous  
7 customers for the purpose of selling Counterclaimant's products to the substantial  
8 benefit of Counterclaimant.

9                 24. Counterdefendant knew of Counterclaimant's business relationships  
10 and customers. Despite this, Counterdefendant wrongfully interfered with  
11 Counterclaimant's customers.

12                 25. Counterdefendants' conduct was designed to disrupt the business  
13 relationships between Counterclaimant and Counterclaimant's customers.  
14 Counterdefendant engaged in this conduct with the knowledge and intent to interfere  
15 with Counterclaimant's business relationship with these customers and to interfere  
16 with Counterclaimant's prospective advantage with these customers.

17                 26. As a proximate result of said intentional conduct, Counterclaimant has  
18 suffered damages in an amount to be proven at trial, but in excess of the  
19 jurisdictional minimum of this court.

20                 27. Counterdefendants' intentional conduct, was willful, oppressive and  
21 malicious and therefore Counterclaimant are entitled to punitive damages.

22                 28. Unless restrained, Counterdefendant will continue to unlawfully disrupt  
23 the business relationships between Counterclaimant and Counterclaimant's  
24 customers to great and irreparable injury, for which damages would not afford  
25 adequate relief. Damages would not completely compensate for the disruption of  
26 Counterclaimant's business and injury to its customers relationships, business  
27 reputations and goodwill resulting therefrom. As a result, an injunction prohibiting  
28 Counterdefendant from further unlawful interference with Counterclaimant current

1 and prospective customers is necessary to provide Counterclaimant with complete  
 2 relief.

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#### **FIFTH COUNTERCLAIM**

##### **INTENTIONAL INTERFENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

7 29. Counterclaimant hereby realleges and incorporate herein by reference  
 8 the above paragraphs 1 through 28 inclusive, as set forth above.

9 30. Counterclaimant had established relationships with numerous  
 10 customers for the purpose of selling Counterclaimant's products to the substantial  
 11 benefit of Counterclaimant. Counterclaimant also had an expectation of future  
 12 relations both scheduled and unscheduled.

13 31. Counterdefendant knew of Counterclaimant business relationships and  
 14 customer appointments with respect to these customers. Despite this,  
 15 Counterdefendant intentionally disclosed Counterclaimant confidential and  
 16 proprietary information to a third party with the intention of wrongfully interfering  
 17 with Counterclaimant's customers.

18 32. Counterdefendants' conduct was designed to disrupt the business  
 19 relationships between Counterclaimant and Counterclaimant's customers.  
 20 Counterdefendant engaged in this conduct with the knowledge and intent to interfere  
 21 with Counterclaimant's business relationship with these customers and to interfere  
 22 with Counterclaimant's prospective advantage with these customers.

23 33. As a proximate result of said intentional conduct, Counterclaimant has  
 24 suffered damages in an amount to be proven at trial.

25 34. Counterdefendant's intentional conduct, was willful, oppressive and  
 26 malicious and therefore Counterclaimant is entitled to punitive damages.

27 35. Unless restrained, Counterdefendant will continue to unlawfully disrupt  
 28 the business relationships between Counterclaimant and Counterclaimant's

1 customers to great and irreparable injury, for which damages would not afford  
 2 adequate relief. Damages would not completely compensate for the disruption of  
 3 Counterclaimant's business and injury to its customers relationships, business  
 4 reputations and goodwill resulting therefrom. As a result, an injunction prohibiting  
 5 Counterdefendant from further unlawful interference with Counterclaimant current  
 6 and prospective customers is necessary to provide Counterclaimant with complete  
 7 relief.

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9 **SIXTH COUNTERCLAIM**

10 **CANCELLATION OF TRADEMARK REGISTRATIONS**

11 36. Counterclaimant hereby realleges and incorporate herein by reference  
 12 the above paragraphs 1 through 34 inclusive, as set forth above.

13 37. Counterdefendant asserts various registered trademarks against  
 14 Counterclaimant in the underlying complaint.

15 38. Counterclaimant asserts that each of the registrations that  
 16 Counterdefendant asserts are subject to cancellation.

17 39. Counterclaimant seeks an order from the Court that each of the asserted  
 18 registrations are to be cancelled by the U.S. Patent and Trademark Office.

19 **WHEREFORE**, Counterclaimant prays for judgment against  
 20 Counterdefendant as follows:

21 (1) That Counterdefendant account and pay to Counterclaimant damages in  
 22 an amount sufficient to fairly compensate Counterclaimant for the injury sustained  
 23 in an amount in excess of the jurisdictional limits of this court;

24 (2) That Counterdefendant be ordered to pay to Counterclaimant the costs  
 25 of this action and Counterclaimant's attorneys' fees; and

26 / / /

27 / / /

28 / / /



**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Mr. Hubbard demands a trial by jury of all triable issues and affirmative defenses herein.

Dated: February 16, 2016

## THE KINDER LAW GROUP

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and